

Supreme Court, U. S.
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MICHAEL RORAK, JR., CLERK

No. 77-53

In the Supreme Court of the United States

OCTOBER TERM, 1977

MARIE PIERRE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

MEMORANDUM SUGGESTING MOOTNESS

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice.
Washington, D.C. 20530.**

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Petitioners are 147 Haitian nationals who seek asylum in the United States as political refugees. The district director of the Immigration and Naturalization Service denied their applications for asylum after he determined that they would not be subject to political persecution if they returned to Haiti. Petitioners have been found excludable after an exclusion hearing held pursuant to 8 U.S.C. 1226, and have been ordered deported. They filed petitions for habeas corpus in the district court, and the deportation orders have been stayed pending final disposition of those petitions.

The petition for a writ of certiorari seeks review of the judgment of the court of appeals affirming the denial of the petitions for habeas corpus. Those petitions challenged the determination that petitioners were not refugees on

the ground that petitioners had not been afforded a hearing on their claims for asylum. Petitioners continue that challenge in their petition for a writ of certiorari, contending that a hearing is required by the United Nations Protocol Relating to the Status of Refugees, to which the United States has acceded, 19 U.S.T. 6223, and by procedural due process. Petitioners assert that "[t]he most that was required was promulgation of a regulation that an excludable alien could raise his claim to asylum under the Protocol in the course of his exclusion hearing" (Pet. 15 n. 20), and that the Attorney General could afford "the appropriate relief" by adopting a regulation to provide, as a pending bill in Congress would, "that excludable aliens may raise their asylum claims in the course of their exclusion hearings" (Pet. 22).

On October 28, 1977, the Commissioner of the Immigration and Naturalization Service announced that "[t]he Service is presently in the process of changing procedures so that an applicant for admission into the United States will be allowed to present his asylum application to an immigration judge in the course of an exclusion proceeding." The text of the announcement (which has been communicated to all the district directors of the Service) is attached hereto as Appendix A. As the announcement states, aliens in the position of these petitioners, who have already had exclusion hearings but who wish to present their asylum claims to an immigration judge, will be given an opportunity to reapply for asylum under the new procedures. The order of deportation against these petitioners will not be executed until they have been given such an opportunity and, if they do reapply for asylum under the new procedures, until the conclusion of those proceedings.

The new procedures being adopted by the Immigration and Naturalization Service will afford petitioners a hearing on their asylum claims before an immigration judge, which is the relief they seek in this case. If petitioners should find that proceeding to be inadequate in any way, they will have an opportunity to assert that claim on judicial review after exhausting the remedy now being provided to them.

Accordingly, both petitioners' own case and the issue they raise concerning asylum claims of excludable aliens have become moot. We therefore submit that the Court should grant the petition for certiorari, vacate the judgment of the court of appeals, and remand the case to the District Court for the Southern District of Florida with directions to dismiss the habeas corpus petitions as moot. See *Weinstein v. Bradford*, 423 U.S. 147; *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

NOVEMBER 1977.

APPENDIX A

October 28, 1977

Philip Wilens, Chief
Government Regulations and Labor Section
Criminal Division

Leonel J. Castillo, Commissioner
Immigration and Naturalization Service

Pierre v. United States, 547 F. 2d 1281 (5 Cir. 1977), petition for certiorari pending; *Sannon v. United States* and *Jean-Baptiste v. United States*, 427 F. Supp. 1270 (S.D. Fla. 1977), appeal to Fifth Circuit pending

The Service is presently in the process of changing procedures so that an applicant for admission into the United States will be allowed to present his asylum application to an immigration judge in the course of an exclusion proceeding. Any person seeking asylum between now and the time the amended regulations go into effect will have his exclusion proceeding deferred to give him an opportunity to apply for asylum under the changed procedures. Those aliens present in the United States who have already had exclusion hearings, but who wish to present their asylum claim to an immigration judge, will be given an opportunity to reapply for asylum under the changed procedures.

In light of the foregoing, the Service believes that the issues raised in both the *Pierre* and the *Jean-Baptiste* litigation are moot.

FOR THE COMMISSIONER

David Crosland
General Counsel

cc: Mario T. Noto,
Deputy Commissioner

cc: Carl J. Wack, Jr.,
Associate Commissioner, Examinations

cc: Robert L. Stewart,
Associate Commissioner, Enforcement

cc: Herman Bookford,
Chief Immigration Judge

cc: Paul C. Vincent,
Chief Trial Attorney

cc: W/F - Haitians

COCOU:FWSchmidt:tg 10/27/77